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CLERK OF U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUSTIN X. WANG (CSB #166183)  
**BAUGHMAN & WANG**  
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San Francisco, California 94111  
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E-filing

Attorney for Plaintiff  
Jin SU

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JW  
HRL

Jin SU

Case No.: 07 4737

Plaintiff

COMPLAINT FOR WRIT IN THE  
NATURE OF MANDAMUS

vs.

MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
ROBERT S. MUELLER, Director of Federal  
Bureau of Investigation

Defendants.

"Immigration Case"

Plaintiff Jin SU, by and through her undersigned attorney, sues Defendants and states as follows:

1. This action is brought against the Defendants to compel action on the Application to Adjust to Permanent Resident Status, or Form I-485, by Plaintiff Jin SU, based on her asylee status, properly filed by the Plaintiff. The I-485 application remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriments.

**PARTIES**

2. Plaintiff Jin SU is a native and citizen of the People's Republic of China. Her Form I-485, Application to Register Permanent Resident or Adjust Status, was received by the U.S.C.I.S. on August 16, 2002 (**Exhibit 1: Receipt Notice**) and is seeking to become lawful permanent resident of the United States based on her asylee status.

3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (DHS), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate

1 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.  
2 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),  
3 the law enforcement agency that conducts security clearances for other U.S. government agencies,  
4 such as the Department of State. As will be shown, Defendant has failed to complete the security  
5 clearances on Plaintiff's case.

#### 6 JURISDICTION

7 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,  
8 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

#### 9 VENUE

10 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action  
11 against officers and agencies of the United States in their official capacities, brought in the  
12 District where the Plaintiff reside if no real property is involved in the action.

#### 13 EXHAUSTION OF REMEDIES

14 7. Plaintiff has exhausted her administrative remedies.

#### 15 CAUSE OF ACTION

16 8. Plaintiff Jin SU is a native and citizen of the People's Republic of China. Her  
17 Form I-485, Application to Register Permanent Resident or Adjust Status, was received by the  
18 U.S.C.I.S. on August 16, 2002 (**Exhibit 1: Receipt Notice**).

19 9. According to the Service Center processing dates, the USCIS Nebraska Service Center is  
20 currently processing I-485 asylee adjustment application filed on February 1, 2006 (**Exhibit 2:**  
21 **Copy of NSC Processing Dates Posted on August 15, 2007**). Plaintiff Jin SU's I-485

22 application has now remained pending for more than five years from the date of the filing.

23 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance  
24 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff's  
25 I-485 application for more than five years from the date of filing, thereby depriving Plaintiff of the  
26 rights to the decision on her application and the peace of mind to which Plaintiff is entitled.

27 11. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties  
28 under the law.

(a) Plaintiff Jin SU has been damaged by simply being deprived of the adjudication of her Application to Adjust to Permanent Resident Status for more than five years. Plaintiff has also been unable to plan any foreign travel or pursue a future course of action in the United States due to the pendency of her I-485 application.

12. The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's I-485 application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

**PRAYER**

13. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

(a) requiring Defendants to expeditiously complete Plaintiff Jin SU's FBI Security Check for her I-485 application, if her name check has not been completed;

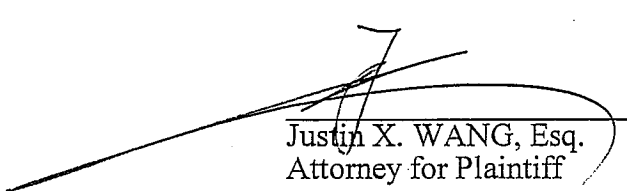
(b) requiring Defendants to expeditiously process Plaintiff's I-485 Application to conclusion;

(c) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice Act; and

(d) granting such other relief at law and in equity as justice may require.

Dated: September 13, 2007

Respectfully submitted,

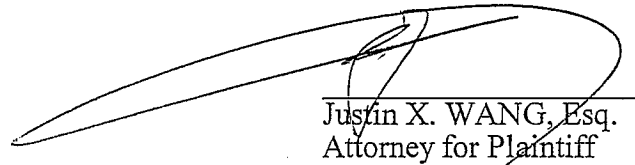
  
Justin X. WANG, Esq.  
Attorney for Plaintiff

**CERTIFICATION OF INTERESTED ENTITIES OR PERSON**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: September 13, 2007

Respectfully submitted,



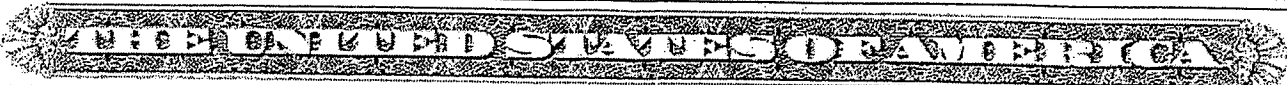
Justin X. WANG, Esq.  
Attorney for Plaintiff

**LIST OF ATTACHMENTS**

<i>Exhibit</i>	<i>Description</i>
1	Receipt Notice
2	Copy of NSC Processing Dates Posted on August 15, 2007

Ex. 1

Notice of Action



RECEIPT NUMBER LIN-02-254-51577		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE August 16, 2002	PRIORITY DATE	APPLICANT A79 559 975 SU, JIN
NOTICE DATE August 19, 2002	PAGE 1 of 1	
JIN SU 1788 FUMIA COURT SAN JOSE CA 95131 <i>5539 Castle Manor Dr San Jose CA 95129</i>		Notice Type: Receipt Notice Amount received: \$ 305.00 Section: Asylee adjustment

The above application or petition has been received. It usually takes 390 to 420 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number 402-323-7830 to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

If you have other questions about possible immigration benefits and services, filing information, or Immigration and Naturalization Service forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call our TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit the INS at [www.ins.usdoj.gov](http://www.ins.usdoj.gov). Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

*570 - 600 days.*

*2.*

2002. 8.17  
2003. 8.17 365  
2004. 8.17 365  
730

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER  
U. S. IMMIG. & NATZ. SERVICE  
P.O. BOX 82521  
LINCOLN NE 68501-2521  
Customer Service Telephone: 402-323-7830



Ex. 2




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## U.S. Citizenship and Immigration Services Nebraska Service Center Processing Dates Posted August 15, 2007

**Notice:** U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report the USCIS service level commitment. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show "6 months".

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

### There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.  
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

### What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

Service Center Processing Dates for **Nebraska Service Center** Posted August 15, 2007

Form	Title	Classification or Basis for Filing	Processing Timeframe
<b>I-90</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement	November 06, 2006
<b>I-90</b>	Application to Replace Permanent Resident Card	10-year renewal	November 26, 2005
<b>I-90A</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement for Special Agricultural Workers (SAW)	6 Months
<b>I-102</b>	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	3 Months
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	15 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	30 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	L - Intracompany transfers	30 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	Blanket L	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	O - Extraordinary ability	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	R - Religious occupation	May 13, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	May 13, 2006
<b>I-131</b>	Application for Travel Document	Permanent resident applying for a re-entry permit	March 23, 2007
<b>I-131</b>	Application for Travel Document	Refugee or asylee applying for a refugee travel document	March 23, 2007
<b>I-131</b>	Application for Travel Document	Haitian Refugee Immigrant Fairness Act (HRIFA) principal applying for advance parole	3 Months
		Haitian Refugee Immigrant Fairness Act	

<b>I-131</b>	Application for Travel Document	(HRIFA) dependent applying for advance parole	November 14, 2006
<b>I-131</b>	Application for Travel Document	All other applicants for advance parole	3 Months
<b>I-140</b>	Immigrant Petition for Alien Worker	Extraordinary ability	October 15, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Outstanding professor or researcher	January 05, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Multinational executive or manager	September 10, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Schedule A Nurses	October 15, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	October 01, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	August 03, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Skilled worker or professional	October 17, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Unskilled worker	October 20, 2006
<b>I-212</b>	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	6 Months
<b>I-360</b>	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	6 Months
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	September 06, 2006
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Based on grant of asylum more than 1 year ago	February 01, 2006
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Based on refugee admission more than 1 year ago	August 01, 2006
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Under the Haitian Refugee Immigrant Fairness Act (HRIFA)	6 Months
<b>I-485</b>	Application to Register Permanent Residence or to Adjust Status	Under the Indochinese Adjustment Act	6 Months
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other change of status applications	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	April 20, 2007
	Application to Extend/Change	Extension of Stay for F or M academic or	

<b>I-539</b>	Nonimmigrant Status	vocational students	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	April 20, 2007
<b>I-539</b>	Application to Extend/Change Nonimmigrant Status	All other extension applications	April 20, 2007
<b>I-612</b>	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	December 29, 2006
<b>I-730</b>	Refugee/Asylee Relative Petition	Petition for accompanying family members of a refugee or an asylee	August 05, 2006
<b>I-751</b>	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	December 07, 2006
<b>I-765</b>	Application for Employment Authorization	Based on an approved asylum application [(a)(5)]	30 Days
<b>I-765</b>	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	11 Weeks
<b>I-765</b>	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	30 Days
<b>I-765</b>	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	May 24, 2007
<b>I-765</b>	Application for Employment Authorization	All other applications for employment authorization	11 Weeks
<b>I-817</b>	Application for Family Unity Benefits	Voluntary departure under the family unity program	6 Months
<b>I-824</b>	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	December 09, 2006

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